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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
ADRIAN KYLE BENJAMIN,
Defendant.

Case No.: CR 3-20-MJ-71406 (EMC)

**OPPOSITION TO GOVT'S MOTION
TO REVOKE RELEASE ORDER**

1 INTRODUCTION

2 Consistent with the recommendation of U.S. Pretrial Services, Defendant Adrian Kyle
3 Benjamin was granted pretrial release by the magistrate judge on a bond signed by a viable
4 surety and imposing restrictive conditions, including electronic monitoring and mental health
5 treatment. Because the government has not met its burden of proving by clear and convincing
6 evidence that Mr. Benjamin poses such a risk of danger to other persons that no release
7 condition, or combination of release conditions, would reasonably assure the safety of the
8 community, the Court should deny the government's motion revoke the release order.

9 ARGUMENT

10 I. LEGAL STANDARD AND BURDEN OF PROOF UNDER BAIL REFORM ACT

11 Under the Bail Reform Act, the government is entitled to seek review of a magistrate
12 judge's release order by "the court having original jurisdiction over the offense." 18 U.S.C. §
13 3145(a)(1). This Court reviews the magistrate judge's detention order de novo. *United States*
14 v. *Koenig*, 912 F.2d 1190, 1191 (9th Cir. 1990).

15 Pursuant to the procedures set forth in 18 U.S.C. § 3142, criminal defendants are
16 ordinarily entitled to release before trial. See *United States v. Motamedi*, 767 F.2d 1403, 1405
17 (9th Cir. 1985). Moreover, pursuant to that statute, an accused person shall be released pretrial
18 on the "least restrictive" combination of conditions that "will reasonably assure the appearance
19 of the person as required and the safety of any other person and the community." 18 U.S.C. §
20 3142(c)(1)(B). Only in "rare circumstances" may a court order a defendant detained pending
21 trial. *Motamedi*, 767 F.2d at 1405. These circumstances are limited to those in which a judge
22 finds that "no condition or combination of conditions" will (1) "reasonably assure" the
23 appearance of the person at trial, and (2) "reasonably assure" the safety of the community. 18
24 U.S.C. § 3142(e); see also *United States v. Chen*, 820 F. Supp. 1205, 1208 (N.D. Cal. 1992)
25 ("Section 3142 does not seek ironclad guarantees, and the requirement that the conditions of
26 release 'reasonably assure' a defendant's appearance cannot be read to require guarantees
27") (citations omitted). Along these lines, as to danger, the government bears the burden of
28 proving by clear and convincing evidence first that a defendant poses a danger to the

1 community, and then that there is no combination of conditions that will reasonably assure the
 2 safety of the community. *See* 18 U.S.C. § 3142(e)-(f); *see also Motamedi*, 767 F.2d at 1406-
 3 07. Regarding allegations of danger, pretrial release therefore “should be denied only for the
 4 strongest of reasons.” *Id.* at 1407 (citation omitted).

5 In determining whether the government has met its burden, the Court is required to take
 6 into account the following factors:

- 7 (1) The nature and circumstances of the offense charged . . . ;
- 8 (2) the weight of the evidence against the person;
- 9 (3) the history and characteristics of the person, including—
 (A) the person’s character, physical and mental condition, family ties,
 employment, financial resources, length of residence in the community,
 community ties, past conduct, history relating to drug or alcohol abuse, criminal
 history, and record concerning appearance at court proceedings; and
 (B) whether, at the time of the current offense or arrest, the person was on
 probation, on parole, or on other release pending trial, sentencing, appeal, or
 completion of sentence for an offense under Federal, State, or local law; and
 13 (4) the nature and seriousness of the danger to any person or the community that
 would be posed by the person’s release. . . .

14 18 U.S.C. § 3142(g). Significantly, the “weight of the evidence” in support of the charge
 15 against the defendant “is the least important of the various factors.” *Motamedi*, 767 F.2d at
 16 1408. Moreover, “[a]lthough the statute permits the court to consider the nature of the offense
 17 and the evidence of guilt, the statute neither requires nor permits a pretrial determination that
 18 the person is guilty.” *Id.* (citation omitted).

19 The charge here of receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2),
 20 carries a rebuttable presumption that no condition or combination of conditions will reasonably
 21 assure the appearance of the defendant as required and the safety of the community. *See* 18
 22 U.S.C. § 3142(e)(3)(E). However, this rebuttable presumption “shifts only a burden of
 23 production to defendant” and that the “government retains the burden throughout the
 24 proceeding” to show that no condition or combination of conditions would reasonably assure
 25 defendant’s appearance at trial and the safety of the community. *United States v. Moore*, 607
 26 F. Supp. 489, 497 (N.D. Cal. 1985). In rebutting a presumption under § 3142(e)(3), the
 27 “defendant does not bear a heavy burden.” *United States v. Sexton*, 2019 WL 1318344 (D.
 28 Utah Mar. 22, 2019) at *2 (citations omitted). For example, the presumption may be rebutted

1 by a condition of electronic monitoring, a third party custodian, or a recommendation of release
 2 by U.S. Pretrial Services. *See, e.g., United States v. Leyba*, 104 F. Supp.2d 1182, 1183-84
 3 (S.D. Iowa 2000); *United States v. Robinson*, 733 F. Supp. 280, 282 (N.D. Ill. 1990).

4 Accordingly, as Pretrial Services has recommended release in this case and Mr.
 5 Benjamin's mother has already signed onto his bond as a willing surety pursuant to the
 6 magistrate judge's release order, this Court should hold that Mr. Bejnamin has rebutted the
 7 presumption of detention and that the government must now carry the burden of proving by
 8 clear and convincing evidence that no condition or combination of conditions will reasonably
 9 assure the safety of the community if he is granted pretrial release.¹

10 **II. THE GOVERNMENT HAS NOT MET ITS BURDEN HERE FOR DETENTION**

11 The government has failed to meets its burden of proving by clear and convincing
 12 evidence that Mr. Benjamin poses such a risk of danger that no release condition or
 13 combination of release conditions would reasonably assure the safety of the community. On
 14 the contrary, the conditions including electronic monitoring and mental treatment imposed by
 15 the magistrate judge, consistent with recommendation of U.S. Pretrial Services, will reasonably
 16 assure the safety of the community. Accordingly, the Court should deny the government's
 17 motion to revoke the magistrate judge's release order.

18 Mr. Benjamin turns 25 years old this month.² He lives in San Mateo with his mother,
 19 Lauren Guevarro, and her partner, James Tan, as well as his two siblings. Mr. Benjamin, a
 20 high school graduate, has a confirmed history of regular employment, although like many
 21 people this year he has been unemployed for the past several months. Mr. Benjamin has no
 22 prior criminal convictions, arrests or law enforcement contacts of any kind whatsoever. Nor
 23 does he have any history of abusing controlled substances, although he does claim to suffer
 24 from anxiety and depression, and he believes he would benefit from treatment. Mr. Benjamin
 25 and his family have been cooperative with law enforcement since this case was initiated.

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27 ¹ The government does not contend that the release conditions ordered by the magistrate judge
 28 would fail to reasonably assure Mr. Benjamin's appearance as required. See Gov. Mot. at 2.

² Unless otherwise noted, this factual proffer herein is based on the bail report prepared by U.S.
 Pretrial Services.

1 Pretrial Services recommended that Mr. Benjamin be released on a \$25,000 unsecured
2 bond, with his mother acting both as surety and custodian, with additional conditions including
3 electronic monitoring and mental health treatment. The magistrate judge followed this
4 recommendation of Pretrial Services and ordered Mr. Benjamin released, adding a condition
5 that he not consume alcohol. Mr. Benjamin's mother and her partner both offered to serve as
6 sureties on a bond of any amount but, consistent with the recommendation of Pretrial Services,
7 the magistrate judge relied solely upon the mother.

8 In moving for a revocation of the release order, the government focuses almost
9 exclusively on the nature of the charges and the weight of the evidence, which is the least
10 important factor. *See* Gov. Mot. at 3-9. The government also contends that Mr. Benjamin's
11 mother and her partner are supposedly unworthy of serving as sureties or custodians because
12 they are allegedly not close to him and, after law enforcement seized Mr. Benjamin's phone
13 and computer, they provided the means for him to replace them. The government's contentions
14 are belied by the record. Clearly, Mr. Benjamin's mother and her partner are close to him,
15 otherwise they would not put themselves at risk financially and legally by offering to serve as
16 custodian and surety. Moreover, they were not advised by law enforcement of any charges, or
17 even the nature of any suspicion, against Mr. Benjamin when his phone and computer were
18 seized. Accordingly, the government's attempt to infer some nefarious intent on their part must
19 fail.

20 Finally, if the Court nevertheless remains concerned, there is ample room to modify the
21 conditions of release in the magistrate judge's release order rather than revoke it entirely. For
22 example, the Court could add Mr. Tan as a second surety, or impose tighter restrictions on the
23 electronic monitoring. Thus, the government has failed to demonstrate by clear and convincing
24 evidence that the Court has no choice but to revoke Mr. Benjamin's release order.

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28 ///

CONCLUSION

For the aforementioned reasons, the Court should deny the government's motion to revoke the magistrate judge's release order.

Respectfully submitted,

Dated: October 12, 2020

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/S
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